



## CITIZENS COMMITTEE TO COMPLETE THE REFUGE

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August 4, 2010

Dear Ms. Klein,

In April 2010 the Citizens Committee to Complete the Refuge sent San Francisco Bay Conservation and Development Commission (BCDC) a copy of a letter of inquiry submitted to the U.S. Army Corps of Engineers regarding unauthorized activities occurring on salt ponds in Redwood City owned by Cargill, Inc. We are writing to inquire whether BCDC has begun its own investigation of these activities. We request that BCDC instruct the landowners to cease the activities as they are occurring in an area of BCDC jurisdiction and are not authorized by any existing BCDC permit.

In February 2010, members of the public observed large earthmoving equipment working in bittern pond 9. Subsequent to these observations a review of Google Earth aerial photography revealed large earthmoving equipment working in ponds 8e, 9a, 9, and 4. Material is being scraped up from the pond beds and mounded into rows. On the levee at the intersection of ponds 8e and 9, there appears to be a conveyor belt apparatus. In pond 4 it appears earth is being deposited and spread by grading equipment. As recently as Wednesday, July 28, 2010, material was being scraped from the southern corner of Pond 9, loaded into a dump truck and deposited in Pond 4.

We have reviewed the existing BCDC permit (Permit # 4-93) for salt pond maintenance activities and the subsequent amendments of that permit and have found nothing that authorizes such activities. The activities observed do not appear to fall within BCDC's Class 1, 2, or 3 exemptions. The activities observed have not been described in any of the permit applications submitted to BCDC or the U.S. Army Corps of Engineers, nor do the activities support any on-going salt production operations. Furthermore, Cargill has publicly stated it has ceased salt production on the Redwood City salt ponds, thus these activities cannot be in support of "on-going salt production."

No mention of this work has been made in required annual maintenance reports to the U.S. Army Corps of Engineers (Corps) for their permit 190098S, nor was any mention of these activities made in the Corps Public Notice (PN2008-00160S) issued on June 30, 2009 regarding renewal of Cargill's Solar Salt System maintenance permit. Has any of this work been reported in the Annual Maintenance Report required by Special Condition B or in the annual Pre-Notification of Proposed Activities required by Special Condition

C of BCDC permit 4-93 Amendment 3? Has Cargill ever contacted BCDC regarding these activities under Special Condition K of BCDC permit 4-93 Amendment 3?

The work we have observed does not appear to be covered under Permit 4-93 or its subsequent amendments, what enforcement actions have BCDC taken to halt the unauthorized work? CCCR respectfully requests the following information:

- Whether the Cargill activities have been reviewed for the lawfulness under Permit 4-93. Whether Cargill has been instructed to halt the unauthorized activities. If yes, we respectfully request a copy of that communication. If not, please explain why this has not happened.
- The extent of the unauthorized activities. Specifically, what are the acreages of impacts within Redwood City ponds 9, 9a, 8e, and 4?
- The length of time these activities have been going on.
- The purpose of these activities.
- An account of what has been done with the toxic bittern liquids and bittern laden sediments.
- What actions BCDC proposes to take in the future.

In order to aid BCDC in their investigation we are submitting additional photographs depicting the location and activities in question, (see attached).

The Citizens Committee has an ongoing history of interest in wetlands protection, wetlands restoration and wetlands acquisition. We have taken an active interest in Clean Water Act (CWA), BCDC and California Environmental Quality Act (CEQA) regulations, public notices, policies, implementation and enforcement. We have established a record of providing information regarding possible CWA violations to both the USACE and EPA, regularly responding to USACE public notices and informing the public of important local CWA issues. We respond to CEQA Negative Declarations and Environmental Impact Reports (EIRs) and to BCDC public notices. All of these actions demonstrate our ongoing commitment to wetland issues, towards protecting the public interest in wetlands, in Section 404 and 401 of the CWA, the McAtter-Petris Act, and CEQA. We have a long established relationship with BCDC responding to public notices and attending meetings.

BCDC 4-93 permit acknowledges the importance of salt pond habitat. In particular, the Final Environmental Assessment identifies the following beneficial impacts, all of which are threatened by the unauthorized activities we have described in this letter:

**Shorebird and Waterfowl Habitat.** The continued maintenance of the salt pond system preserves habitat for large numbers of wintering shorebirds and waterfowl, and as a stopover for numerous migrating bird species. United States Fish and Wildlife Service studies indicate that the salt ponds hold the majority of over 30 species of waterfowl. As a whole, San Francisco Bay has been identified as a site of critical importance to migrating and wintering shorebirds, and over 60 percent of these occur primarily south of the San Mateo Bridge and within the salt pond system;

**Wildlife Habitat.** The salt pond system provides expanses of open, friable substrate which is suitable nesting habitat for several shorebird and seabird populations that did not commonly breed in the South Bay prior to creation of the salt pond system. These include the American

avocet, black-necked stilt, Forster's tern, Caspian tern, California gull, western gull and, of note, the first breeding record for northern California, the black skimmer;

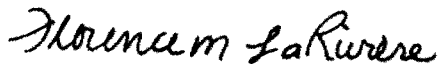
**Snowy Plover Breeding Habitat.** The federally threatened snowy plover is not otherwise present in the South Bay. However, habitat provided by the salt pond system supports one of the largest breeding populations of snowy plovers in North America; and

**California Least Tern Habitat.** The federally endangered California least tern historically nested atop levees and other locations with open, friable substrate throughout the salt pond system. Although these sites have not been used lately, least terns still occur locally, and could breed at these locations in the future. In addition, several of the salt ponds are used by least terns as postbreeding foraging sites.

The activities that are being conducted in the Redwood City salt pond complex have not been observed in context with any previously authorized salt pond maintenance activities, do not appear to be consistent with any categorical exemptions, are occurring in an area that Cargill has publicly stated is no longer in salt production, are occurring in former bittern ponds, involve the movement of bittern-laden soils, are massive in scale, and are substantially altering the landscape of the salt pond interiors, possibly jeopardizing future restorability. We encourage BCDC to take enforcement action. We await your response to our inquiries.

Thank you for your cooperation.

Yours sincerely,



Florence M. LaRiviere  
Chairperson  
Enclosure

USACE San Francisco District, Jane Hicks  
USEPA Region 9, David Wampler  
SFBWQCB, Bruce Wolfe, Brian Wines